



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2013

Mr. Bill Delmore
Assistant District Attorney
9th Judicial District
207 West Phillips, Second Floor
Conroe, Texas 77301

OR2013-22140

Dear Mr. Delmore:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 509295.

The Montgomery County District Attorney's Office (the "district attorney's office") received a request for e-mails sent by a named assistant district attorney during a specified period of time. You state the district attorney's office will release some of the requested information. You claim some of the submitted information is not subject to the Act. You also claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

You contend portions of the information submitted as Appendix B are not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002. Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *See id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). You inform us portions of Appendix B consist of personal messages that have no connection with the official business of the district attorney's office and which constitute incidental use of e-mail by employees of the district attorney's office. Based on your representations and our review of the information at issue, we find some of the information in Appendix B does not constitute public information for purposes of section 552.002 of the Government Code. *See* Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Therefore, this information is not subject to the Act, and the district attorney's office need not release it in response to this request. However, we conclude the remaining portions of the e-mails, which we have marked, were written, produced, assembled, or maintained in connection with the transaction of official business by employees of the district attorney's office in their official capacities. Thus, those portions of the e-mails are subject to the Act. Because you have raised no exceptions for this information, it must be released.

Section 552.108 of the Government Code provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

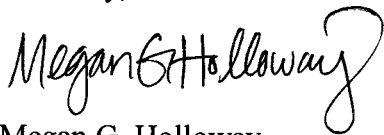
You state the e-mails contained in Appendix C reflect the mental impressions and legal reasoning of attorneys representing the state and were prepared in the course of preparing for criminal litigation. Based on your representations and our review, we find the district attorney's office has demonstrated the applicability of section 552.108(a)(4) to Appendix C. Thus, the district attorney's office may withhold Appendix C under section 552.108(a)(4) of the Government Code.

In summary, with the exception of the information we have marked for release, we find Appendix B is not subject to the Act and need not be released. The district attorney's office may withhold Appendix C under section 552.108(a)(4).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/dls

Ref: ID# 509295

Enc. Submitted documents

c: Requestor
(w/o enclosures)